

1743

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Michael ROTHE, Joachim PORZELT,
Claude LEHMANN, Gunther BECHER,
and Stefan DIETZE

Confirmation No.: 6646

Appln. No.: 10/085,390

Examiner: SNAY, J. R.

Filed: February 28, 2002

Group Art Unit: 1743

For: "PROCESS AND APPARATUS FOR THE DETERMINATION OF
PARAMETERS OF A BREATH CONDENSATE"

Attorney Docket No.: 3648.034

Customer No.: 000041288

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This election is responsive to the Office Action dated March 17, 2005, with a response due April 18, 2005 (April 17, 2005 being a Sunday).

Further, wherein the Examiner requires Applicant to elect for prosecution from either:

Group I: Claims 1-11, drawn to a method for analyzing a breath condensate, classified in class 436, subclass 43.

Group II: Claims 12-24, drawn to an apparatus, classified in class 422, low loss cable, Subclass 422.

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The position of the Examiner can be found on pages 2-3 of the Office Action.

In response, Applicant elects Group I, Claims 1-11, **with traverse.**

Traversal is for the following reasons:

In issuing a Restriction Requirement, the Examiner **must satisfy two criteria for a proper restriction of the claims** of the application. First, he **must** show that the application claims independent or distinct inventions, as required by both § 121 and the USPTO rules. Second, the Examiner **must** show that examining all claims inventions in a single application would constitute a serious burden on the USPTO.

In the instant case, the Examiner fails to show that examining all claims inventions in a single application would constitute a serious burden.

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Accordingly, withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,

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(813) 886-6085

Date: **April 16, 2005**

CERTIFICATION OF MAILING AND AUTHORIZATION TO CHARGE

I hereby certify that a copy of the foregoing RESPONSE TO ELECTION/RESTRICTION REQUIREMENT for U.S. Application No. 10/085,390 filed February 28, 2002, was deposited in first class U.S. mail, with sufficient postage, addressed: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **April 16, 2005**.

The Commissioner is hereby authorized to charge any additional fees, which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.


Yaté K. Cutliff